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Supreme Court of the United States

OCTOBER TERM, A. D. 1956

No. ~~1028~~ 131

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-AFL-CIO),

and

BENTON HARBOR MALLEABLE LOCAL No. 880 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO),

Petitioners,

vs.

BENTON HARBOR MALLEABLE INDUSTRIES,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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and

BENTON HARBOR MALLEABLE LOCAL No. 889 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO),

Petitioners,

vs.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

Opinions Below

The opinion of the District Court is not reported. It is printed in the record pages 20a to 28a. The opinion of the Court of Appeals is reported at 242 F. 2d 536, and also appears at 39 L.R.R.M. 2689 and in the Appendix to the petition pages 1b to 9b.

Jurisdiction

Petitioners are seeking to invoke the jurisdiction of this Court under 28 U.S.C. 1254. Petitioners' application for certiorari is required (28 U.S.C. 2101(c)) to be made within ninety days after entry of judgment by the Court of Appeals on March 29, 1957. Petition for certiorari was served upon attorneys for respondent on May 23, 1957.

Statutes Involved

Section 3 of the United States Arbitration Act (9 U.S.C. 3, 61 Stat. 669):

> "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

Questions Presented

1. As a matter of contract interpretation, were petitioners entitled to a stay under Section 3 of the Arbitration Act because the issue involved in respondent's suit for breach of contract damages was referable to arbitration under the terms of the particular collective bargaining agreement?

2. Was it the court's (rather than an arbitrator's) function to determine whether or not the issue involved in respondent's suit for breach of contract damages was referable to arbitration?

Statement

On February 26, 1952, respondent, an employer, and petitioners, labor unions, entered into a collective bargaining agreement, pertinent sections of which are set forth in pages 8a through 13a of the record.

Subsequently, respondent filed this action in the District Court for the Western District of Michigan under Sec. 301(a) of the Labor Management Relations Act 1947, (29 U.S.C. 185(a)) against petitioners to recover damages for breach of the no-strike clause of the agreement (R. 2a-7a). Petitioners filed a motion to dismiss (not pertinent here) or in the alternative, relying on Section 3 of the Arbitration Act (R. 17a):

> "To stay the proceedings in this action until arbitration of the of the [*sic*] matters complained of by plaintiff shall have been had on the ground that the complaint tenders only issues which are referable to arbitration under an agreement in writing between the plaintiff and defendants * * *."

The District Court denied petitioners' motion to stay the proceedings pending arbitration (R. 1a), and the Court of Appeals for the Sixth Circuit affirmed. Both courts were of the opinion that petitioners were not entitled to a stay because the agreements between the parties, as a matter of contract construction, did not provide for arbitration of the issues involved in respondent's suit for damages for breach of contract. Both courts were also of the opinion that it was for the court and not an arbitrator to decide whether, as a matter of contract interpretation, the issue in respondent's suit for damages was referable to arbitration.

ARGUMENT.

1. The basic question in this case is whether the particular collective bargaining agreement, as a matter of contract construction, provides for arbitration of respondent's claim for damages occasioned by strikes and work stoppages in violation of that agreement. The answer to that question determines whether or not petitioners were entitled to a stay under Section 3 of the Arbitration Act (9 U.S.C. 3). Both the District Court and the Court of Appeals found that the agreement does not so provide. The Court of Appeals predicated its holding upon the absence of anything "in the collective bargaining agreement which gives the appellants the right to submit to arbitration the question of its liability for the claimed breach of its no-strike obligation . . ." (Pet. 9b). The Sixth Circuit did not hold, as petitioner states, that "an arbitration clause in . . . a contract, regardless of the generality of its wording, [does] not apply to that class of alleged breaches which involved the strike lock-out clause" (Pet. 5). On the contrary, the Sixth Circuit recognized that the question was one of contract interpretation, and that "if the contract gives the right of arbitration, it is enforceable under the provisions of Sec. 3 of the United States Arbitration Act . . ." (Pet. 3b).

This Court has had occasion to remind the bar that it will not grant certiorari to review evidence and discuss facts,[1] and has refused to grant certiorari where these are the only issues presented. *General Talk. Pictures Co. v. Western El. Co.*, 304 U.S. 175, 178 (1938). *Southern Power*

[1] See, *e.g.*, Frankfurter, J., dissenting in *Rogers v. Missouri Pacific Railroad Co.*, 1 L. ed. 2d 493, 515 (1957).

Co. v. North Carolina Public Serv. Co., 263 U.S. 508 (1924); *Houston Oil Co. v. Goodrich*, 245 U.S. 440 (1918). This rule and the reasons which support it are applicable to this case.

Reduced to its essence, it is petitioners' contention that the courts below misinterpreted the meaning of their contract with respondent. The contract provision in question is not a standard contract provision. Every contract provision of this type necessitates an independent determination of the meaning of its specific language. A decision construing one contract cannot have any general application to other collective bargaining agreements containing different terms. The various district courts and courts of appeals which have decided motions for stays under Section 3 of the Arbitration Act have rested their decisions upon their interpretations of the language in the contracts under consideration.[2] Such individual determinations inevitably yield differing conclusions, sometimes resulting in a stay pending arbitration and sometimes denying it. To reason from these differing results, occasioned by con-

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[2] *United Electrical, R. & M. Wkrs. v. Miller Metal Prods.*, 215 F. 2d 221 (C.A. 4, 1954); *International Union v. Colonial Hardwood Floor Co.*, 168 F. 2d 33 (C.A. 4, 1948); *Markel Electric Prod. v. United Electricel, R. & M. Wkrs.*, 202 F. 2d 435 (C.A. 2, 1953); *Signal-Stat Corporation v. Local 475, etc.*, 235 F. 2d 298 (C.A. 2, 1956), cert. den. June 10, 1957; *Square D Co. v. United Electrical, Radio & Mach. Wkrs.*, 123 F. Supp. 776, (E.D. Mich., 1954); *Harris Hub Pad & Spring Co. v. United Elec., R. & M. Wkrs.* 121 F. Supp. 40 (M.D. Pa., 1954); *Bassick Co. v. Bassick Local 229*, 126 F. Supp. 777 (D. Conn. 1954); *Metal Polishers, Etc. v. Rubin*, 85 F. Supp. 363 (E.D. Pa., 1949).

In *Ingersoll Products Division v. United Farm, Etc. Wkrs.*, 34 L.R.R.M. 2174, 2176 (N.D. Ill., 1954), the district judge said:

> "A number of cases are cited which both include and reject arbitration for controversies analogous to that at bar. In each case the conclusion is referable to the language and context of the particular agreement. Every such situation is unique and no purpose would be served in reviewing the decisions."

tracts with divergent phraseology, that any conflict exists among the courts of appeals as to the "basic approach of federal courts to arbitration provisions in collective bargaining contracts" (Pet. 5) is fallacious. Certainly the Sixth Circuit has not manifested any judicial aversion to enforcing arbitration agreements.[3]

Although the statutory restraints on certiorari to the highest court of a State (28 U.S.C. 1257) differ somewhat from the criteria established by this Court for review on writ of certiorari to a court of appeals, it is significant that this Court dismissed a writ of certiorari in *Black* v. *Cutter Laboratories*, 351 U.S. 292 (1956), for the reason that the only issue involved was the State's "construction of a local contract under local law" (p. 299). Respondent submits that the same considerations present in the *Cutter Laboratories* case, coupled with the more extensive judicial discretion on writs of certiorari to a court of appeals, warrant a refusal by this Court to grant certiorari in this case.

Petitioners urge that there is a conflict between this decision of the Sixth Circuit and the decision of the Second Circuit in *Signal-Stat Corp.* v. *Local 475, etc.*, 235 F. 2d 298 (C.A. 2, 1956), cert. den. June 10, 1957 (Pet. 8-9). An examination of the decisions discloses no such conflict. The Second Circuit also recognized that the grant or denial of a stay for arbitration depends on the specific language of the applicable collective bargaining agreement. In the *Signal-Stat* case the Second Circuit, speaking through Judge Frank, held that a contract provision stating that "*All* disputes, grievances or differences" are arbitrable, necessitated a submission to arbitration of a dispute arising from an alleged breach of a no-strike clause. Because of the difference in phraseology the *Signal-Stat* opinion

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[3] See, *e.g.*, *Local 70, Warehouse, etc.* v. *Buckeye Cotton Oil Co.*, 236 F. 2d 776 (C.A. 6, 1956), cert. den. June 10, 1957.

distinguished the same Circuit's decision in *Markel Electric Prod.* v. *United Electrical, R. & M. Wkrs.*, 202 F. 2d 435, 436-37 (C.A. 2, 1953), where it had held that a contract provision requiring arbitration of any difference "between the Company and any employee" did not require submission to an arbitrator of the issue of the defendant union's breach of a no-strike clause. In the present case, the Sixth Circuit construed a contract provision for submission to arbitration of any "grievance relating to the meaning or application of this agreement . . . not satisfactorily disposed of in the foregoing steps of the grievance procedure" as not calling for arbitration of the issue involved in respondent's suit for damages for breach of the no-strike clause (Pet 7b-8b). Far from presenting a conflict, it can be said that the Second and Sixth Circuits are in agreement because the contract provision in *Markel* is more comparable to the one in the present case than is the contract provision in *Signal-Stat*.

2. Petitioners contend that the question as to whether the issue involved in this suit is referable to arbitration under the written agreement should be referred to arbitration. The Sixth Circuit concluded that the agreement under consideration in this case contains no provision giving the arbitrator such jurisdiction (Pet. 5b).

Petitioners assert that this holding conflicts with that of the First Circuit in *Local 205, etc.* v. *General Electric Company*, 233 F. 2d 85 (C.A. 1, 1956), aff'd June 3, 1957, 40 LRRM 2119. However, the Sixth Circuit appears to be in complete agreement with the First Circuit in holding that the contract itself determines whether the arbitrator or the court is to decide the issue of arbitrability. The Sixth Circuit, after citing the *General Electric* case (Pet. 4b-5b), said:

"As pointed out in that case (p. 101), such a procedure can be provided by the arbitration agreement if the parties so desire, but whether they have done so is a problem of contract interpretation."

The decision of the Sixth Circuit on the jurisdiction-to-decide-jurisdiction question can stand, independent of any other ground, on contract interpretation, and thus is clearly in accord with the views of the First Circuit. Even to the extent that the Sixth Circuit supports its position by reference to the particular requirement of Section 3 of the Arbitration Act[1] (Pet. 5b), it is not in conflict with the First Circuit. In the *General Electric* case Judge Magruder was dealing with Section 4 of the Arbitration Act in a suit to compel arbitration, and his dictum quoted in the Petition (p. 15) was made in the course of a discussion which obviously did not take into consideration the peculiar requirement in Section 3.

3. Finally, petitioners argue (Pet. 17-20) that there is involved in the Sixth Circuit's decision "its determination that the issues involved in respondent's claim of alleged breaches of the strike-lockout prohibition clause were insufficiently defined" (Pet. 17), and that such determination conflicts with the Second and Third Circuit cases of *Shanferoke Coal & Supply Co.* v. *Westchester S. Corp.*, 70 F. 2d 29 (C.A. 2, 1934), aff'd 293 U.S. 449 (1935), and *Donahue* v. *Susquehanna Collieries Co.*, 138 F. 2d 3 (C.A. 3, 1943). It is true that the Sixth Circuit said it had "difficulty in ascertaining what the issue is" (Pet. 5b), but the decision does not depend upon that difficulty alone, nor does it reject or conflict with the views of the Second

[1] Section 3 of the Arbitration Act provides that "the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, etc."

and Third Circuits. The Sixth Circuit's holding is that, assuming an issue has been made which in some form denies liability for the strikes, "a proper construction of the contract provisions does not entitle the appellants to a stay pending arbitration." (Pet. 6b) and there is "nothing in the collective bargaining agreement which gives the appellants the right to submit to arbitration the question of its liability for the claimed breach of its no-strike obligation" (Pet. 9b). That holding is consistent with the decisions of the Second and Third Circuits.

CONCLUSION

For the foregoing reasons respondent respectfully submits that the petition for writ of certiorari should be denied.

Respectfully submitted,

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